(107)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.888 of 2002

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

PETITIONERS : 1. Suresh Chandra Sharma S/o G.P.Sharma, aged about 40 years, posted at Bilaspur.
: 2. Pravendra Kumar S/o Jagdish Prasad posted at Khongsara.
: 3. Gautam Mangal, S/o Mangal Posted at Kargi Road.
: 4. Hakim Khan S/o Nawaz Khan, Posted at Bilaspur.
: 5. S.N.Dubey, S/o S.P.Dubey, Posted at Manendragarh.
: 6. Jagat Narayan, S/o Khoselal. Posted at Khongsara.
: 7. Ramboth Yadav S/o Ramadhar, Posted at Bilaspur.
: 8. Johnsy Mathew S/o Mathew posted at Rupond.
: 9. Sohanlal Sayane S/o Fakir Chand posted at Bilaspur
: 10. S.C.Majhee S/o B.Majhee, Posted at Umaria.
: 11. Suman Kumar Jha S/o Brij Kishore Jha posted at Kargi Road.
: 12. Umesh Prasad S/o Bhatia Mahato posted at Darritola.

All are TCM Gr.III working under TCL (L-2) S.E.Rly., Bilaspur (CG)

Versus

RESPONDENTS : 1. The Union of India, through General Manager, South Eastern Railway, Garden Reach, KOLKATTA-700043.
: 2. Divisional Railway Manager, South Eastern Railway, Bilaspur (Chhattisgarh).
: 3. Sr. Divisional Personnel Officer, S.E.Railway, Bilaspur (CG)

: 4. Sr. Divisional Signal & Telecommunication Engineer, S.E.Railway, Bilaspur (CG)
: 5. Dy.Chief Project Manager/Rly. Electrification, S.E. Rly, Bilaspur (CG)
: 6. Central Administrative Tribunal, Bench at Jabalpur Through its Registrar. Jabalpur.

Shri Manindra Shrivastava, Sr. Counsel with Shri Amrito Das, Counsel for the petitioners.

Shri P.S.Koshy, Counsel for the respondents No.2 to 5.

ORAL ORDER
(Passed on 10th January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. Out of 26 applicants before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short 'the Tribunal) in O.A.No.325/98, only 12 applicants have preferred this writ petition under Articles 226/227 of the Constitution of India. calling in question the validity and legality of the order of the Tribunal dated 17th January 2002 passed in the said O.A. The Tribunal vide impugned order has dismissed the application filed by the applicants and others.

2. The background facts leading to the filing of the O.A. before the Tribunal, in brief, are as follows:

The petitioners were initially appointed as skilled Artisan staff on casual rates of pay in Railway Electrification (R.E.) and they were granted temporary status with effect from 1.1.1984 after completion of 360 days of continuous service. The R.E. staff who had acquired temporary status w.e.f. 1.1.1984 after being declared suitable and empanelled vide memo No.E/GE/Rectt./36/Assets/S&T/RE/BSP. dated 20.12.1996 issued by the Office of Sr. Divisional Personnel

Officer for absorption as skilled Artisan staff in the cadre of Telecom Maintainer (TCM Grade-III) in the scale of Rs.950-1500 in open line, the petitioners herein were posted as TCM Gr.III vide office order No.S&T/146, dated 20.1.1997 at various places against the then existing vacancies. The petitioners and others filed O.A. before the Tribunal praying for protection of their pay in accordance with last pay drawn and seeking mandamus to the Department that their pay should be re-fixed as provided under para 602 of the Railway Establishment Manual by applying Fundamental Rule 22(a).

3. The claim of the petitioners was opposed by the Department filing a detailed reply. The Tribunal having considered the rival claims of the parties and rule-position, did not find merit in the claim of the petitioners and therefore, by the order impugned in this writ petition. dismissed the application.

4. We heard the learned counsel for the parties. Shri Amrito Das, learned counsel for the petitioners would strenuously contend that in terms of the provisions of F.R. 22 (a) read with para 602 of the R.E.Manual, the claim of the petitioners is well founded and therefore, the Tribunal ought not to have dismissed the application. On the other hand, learned standing counsel for the Railways, would support the impugned order and adopt the reasons stated by the Tribunal in the impugned order.

5. Having heard learned counsel for the parties, a short question that arises for our decision is whether the view taken by the Tribunal could be faulted with on any permissible ground of judicial review. Before we deal with that question, since the claim of the petitioners is grounded on the provisions of F.R. 22 (I)(a)(1) read with para 602 of

R.E. Manual, it is appropriate to notice those provisions. F.R. 22(I)(a)(1) reads as follows:

> "F.R.22.(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:--
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> (a)(1) Where a Government servant holding a post, other than tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or [rupees one hundred only], whichever is more.
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> [Save in cases of appointment on deputation to an ex cadre post, or to a post on *ad hoc* basis or on direct recruitment basis], the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an *ad hoc* promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:
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> Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by

him on regular basis by an amount equal to the last increment in the time-scale of the lower post or [rupees one hundred], whichever is more."

Para 602 of Railway Establishment Manual reads as follows:

"Para 602. F.R.22(a) allowed pay last drawn to count for increments in the post."

6. We are also of the opinion that even the provisions of F.R. 22(IV) have also bearing on the decision making and therefore, it needs to be noticed. It reads as follows:

"22(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

F.R.22(I)(a)(1) provides that "where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity (emphasis is by the Court) is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay as accrued [rupees one hundred only], whichever is more".

7. We are at loss to understand how the above provision would come to the aid of the petitioners. It is not their case that before they were empanelled and their services were absorbed as skilled Artisan staff i.e. in the cadre of Telecom Maintainer (TCM) by memo No.E/GE/Rectt./36/Assets/S&T/RE/BSP, dated 20.12.1996, they were holding a substantive post or temporary post or officiating post in the cadre of Telecom Maintainer (TCM). The uncontested position is that all the petitioners made entry intro services in R.E. organization as skilled Artisan staff on casual rate of pay and subsequently they acquired temporary status w.e.f. 1.1.1984. Therefore, the provision of F.R.22(I)(a)(1) could not be pressed into service to sustain the claim of the petitioners.

8. At this stage itself, the provisions of F.R.22(IV) needs to be noticed because that provision is a straight answer to deny the claim of the petitioners. As per F.R.22(IV), where a Government servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service. In other words, if the petitioners were to hold ex cadre post of Telecom Maintainer (TCM) before their absorption vide memo No.E/GE/Rectt./36/Assets/S&T/RE/BSP, dated 20.12.1996, the provisions of F.R.22(IV) could have been pressed into service in support of the claim made by the petitioners. Therefore, even F.R.22(IV) is of no help to the petitioners. If the provisions of F.R.22(I)(a)(1) and F.R.22(IV) are of no help to the petitioners to sustain the claim, then even paragraph 602 of the R.E. Manual on which reliance is placed, is of no help to the petitioners. We say this because paragraph 602 of R.E. Manual simply says that F.R.22(a) allows pay last drawn to count that increments in the post. If we read

what is stated in para 602 of R.E. Manual in the context of F.R. 22(I)(a)(1) or F.R.22(IV), then only it makes sense, otherwise, para 602 itself is not comprehensive nor does it make any sense. Be that as it may, executive instruction contained para 602 of Railway Establishment Manual has no legal consequence or efficacy to alter or modify the provisions of F.R.22(I)(a)(1) and/or F.R.22(IV). Therefore, the view taken by the Tribunal is unexceptionable and there is no warrant for us to interfere with its order.

9. In the result and for the foregoing reasons, this writ petition is dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge